

JAMES S. COON
(Oregon State Bar No. 77145)
jcoon@stc-law.com
SWANSON THOMAS & COON
820 S.W. Second Avenue, Ste. 200
Portland, Oregon 97204
Tel: (503) 228-5222; Fax: (503) 273-9175

Attorneys for Plaintiffs JEFFREY POOLE
[Additional Attorneys follow signature page]

TERRY E. SANCHEZ (State Bar No. 101318)
MALCOLM A. HEINICKE (State Bar No. 194174)
KATHERINE M. FORSTER (State Bar No. 217609)
MUNGER, TOLLES & OLSON LLP
355 South Grand Avenue, 35th Floor
Los Angeles, California 90071-1560
Tel: (213) 683-9100, Fax: (213) 687-3702

Leigh Ann Collings Tift
(Oregon State Bar 05473)
LITTLER MENDELSON, PC
600 University Street, Suite 3200
Seattle, Washington 98101-3122
Tel: (206) 381-4905; Fax: (206) 447-6965

Attorneys for Defendant
MERRILL LYNCH, PIERCE, FENNER & SMITH
INCORPORATED

UNITED STATES DISTRICT COURT

DISTRICT OF OREGON

JEFFREY POOLE, WINSOME P.
CARTER, JAMES C. HOWELL,
JEFFREY KEMP, ANDREA LOUGHLIN,
HENRY V. M. MULTALA, ANTHONY
PALUMBO, MARY O'REILLY,
BURKHARD SPRING, DAVID
BACHRACH, PETER R. GARRISON,
ROBERT TRAITZ, EDWARD FRANCE,
EDWARD C. REINHART, MICHAEL
WENDLING and RICHARD J. TESTA,
JR., on behalf of themselves, the general
public, and all others similarly situated,

Plaintiffs,

v.

MERRILL LYNCH, PIERCE, FENNER &
SMITH, INCORPORATED, a corporation,

Defendants.

CASE NO. 3:06-cv-01657-HA

**SECOND AMENDMENT TO THE JOINT
STIPULATION OF SETTLEMENT OF
CLASS ACTION AND RELEASE**

This Second Amendment to the Joint Stipulation of Settlement of Class Action and Release ("Amendment") is entered into between Plaintiffs David Bachrach ("Bachrach"), Edward France ("France"), Peter Garrison ("Garrison"), James C. Howell ("Howell"), Burkhard Spring ("Spring"), Henry V.M. Multala ("Multala"), Winsome P. Carter ("Carter"), Andrea Loughlin ("Loughlin"), Jeffrey Kemp ("Kemp"), Anthony Palumbo ("Palumbo"), Mary O'Reilly ("O'Reilly"), Jeffrey Poole ("Poole"), Edward C.

Reinhart (“Reinhart”), Robert Traitz (“Traitz”) Richard J. Testa, Jr. (“Testa”) and Michael Wendling (“Wendling”) (collectively, “the Settling Named Plaintiffs” or “Class Representatives”), individually and as class representatives on behalf of the “Settlement Class” defined in Section V, Paragraph 1.2 of the Joint Stipulation of Settlement of Class Action and Release (“Agreement”), on the one hand, and Defendant Merrill Lynch, Pierce, Fenner & Smith Incorporated (“Merrill Lynch”), on the other hand. The settlement class and Merrill Lynch will be referred to collectively as the “Settling Parties.”

WHEREAS, the Settling Parties wish to amend the Agreement as provided below:

NOW, THEREFORE, the undersigned attorneys of record, Dostart Clapp Gordon & Coveney, LLP and Munger, Tolles & Olson LLP, who are duly authorized to enter into this Amendment on behalf of the Class Representatives (for themselves and the Settlement Class Members) and Merrill Lynch, respectively, hereby agree as follows:

1. Section V, paragraph 1.5 of the Agreement is amended as follows:

1.5 “Class Period” means the following applicable periods: (a) with respect to Financial Advisors who worked in any portion of the United States (but excluding California), Washington, D.C., and Puerto Rico other than the States of Massachusetts, New York, New Jersey, Oregon, Pennsylvania, Texas and Washington (except those Persons, if any, who have already opted into collective action lawsuits in the Other Pending Actions and for whom special provisions will account for their arguably longer claim periods), the period that runs from the date which is three years prior to the

date on which preliminary approval is given for the settlement in the Consolidated Action through December 31, 2007; (b) with respect to Financial Advisors who worked in Massachusetts, and only for those work months they worked in Massachusetts, September, 24, 2001, through December 31, 2007; (c) with respect to Financial Advisors who worked in New York, and for only those work months they worked in New York, May 5, 2000, through December 31, 2007; (d) with respect to Financial Advisors who worked in New Jersey, and for only those work months they worked in New Jersey, June 20, 2000, through December 31, 2007; (e) with respect to Financial Advisors who worked in Oregon, and for only those work months they worked in Oregon, November 16, 2001, through December 31, 2007; (f) with respect to Financial Advisors who worked in Pennsylvania, and for only those work months they worked in Pennsylvania, February 22, 2003, through December 31, 2007; (g) with respect to Financial Advisors who worked in Texas, and only for those work months they worked in Texas, October 26, 2002, through December 31, 2007; and (h) with respect to Financial Advisors who worked in Washington, and for only those work months they worked in Washington, May 9, 2003, through December 31, 2007.

//

//

//

//

2. Nothing in this Second Amendment shall affect the Maximum Settlement Amount or the Net Settlement Consideration set forth in the original Joint Stipulation of Settlement of Class Action and Release filed with and preliminarily approved by this Court.

DATED: February 23, 2009

DOSTART CLAPP GORDON
& COVENEY, LLP

By: s/James F. Clapp
JAMES F. CLAPP

Plaintiffs' Liaison Counsel

DATED: February 23, 2009

MUNGER, TOLLES & OLSON LLP

By: s/Terry E. Sanchez
TERRY E. SANCHEZ

Attorneys for Defendant
MERRILL LYNCH, PIERCE, FENNER
& SMITH INCORPORATED

Additional Attorneys for the Plaintiffs:	
<p>JAMES S. COON (Oregon State Bar No. 77145) jcoon@stc-law.com SWANSON THOMAS & COON 820 S.W. Second Avenue, Ste. 200 Portland, Oregon 97204 Tel: (503) 228-5222 Fax: (503) 273-9175 Attorneys for Plaintiffs Edward C. Reinhart and Jeffrey Poole</p>	<p>NORMAN SHABEL nshabel@shabeldenittis.com STEPHEN P. DENITTIS sdenittis@shabeldenittis.com SHABEL & DENITTIS, P.C. 5 Greentree Centre, Suite 302 Marlton, NJ 08053 Tel: (856) 797-9951 Fax: (856) 797-9978 Attorneys for Plaintiff Edward France</p>

<p>JERRY K. CIMMET cimmet@att.net Attorney at Law 177 Bovet Road, Suite 600 San Mateo, CA 94402 Tel: (650) 866-4700 Fax: (650) 866-4770 Attorney for Plaintiffs Winsome P. Carter, James C. Howell, Jeffrey Kemp, Andrea Loughlin, Henry V. M. Multala, Burkhard Spring and Robert Traitz</p>	<p>PHILIP STEPHEN FUOCO pfuoco@msn.com JOSEPH OSEFCHEN josefchen@msn.com LAW FIRM OF PHILIP STEPHEN FUOCO 24 Wilkins Place Haddonfield, NJ 08033 Tel: (856) 354-1100 Attorneys for Plaintiff Edward France</p>
<p>KENNETH LEHN klehn@winnebanta.com EDWARD P. D'ALESSIO edalessio@winnebanta.com WINNE, BANTA, HETHERINGTON, BASRALIAN & KAHN, P.C. Court Plaza South 21 Main Street P.O. Box 647 Hackensack, NJ 07601 Tel: (201) 487-3800 Fax: (201) 487-8529 Attorneys for Plaintiffs Winsome P. Carter, James C. Howell, Jeffrey Kemp, Andrea Loughlin, Henry V. M. Multala, Burkhard Spring and Robert Traitz</p>	<p>JEFFREY G. SMITH smith@whafh.com ROBERT ABRAMS abrams@whafh.com WOLF HALDENSTEIN ADLER FREEMAN & HERZ, LLP 270 Madison Avenue New York, NY 10016 Tel: (212) 545-4600 Fax: (212) 545-46 53 Attorneys for Plaintiffs Anthony Palumbo, Mary O'Reilly and Peter R. Garrison</p>
<p>RICHARD GLICKMAN glickmanlawcorp@yahoo.com One Maritime Plaza Suite 1600 San Francisco, CA 94111 Tel: (415) 362-7685 Fax: (415) 781-1034 Attorney for Plaintiffs Anthony Palumbo and Peter R. Garrison</p>	<p>LEON GREENBERG wagelaw@hotmail.com Attorney at Law 633 South 4th Street - Suite 9 Las Vegas, NV 89101 Tel: (702) 383-6085 Fax: (702) 385-1827 Attorney for Plaintiff David Bachrach</p>

Additional Attorneys for the Plaintiffs:	
<p>H. TIM HOFFMAN hth@hoffmanandlazeear.com ARTHUR W. LAZEAR awl@hoffmanandlazeear.com HOFFMAN & LAZEAR 180 Grand Avenue, Suite 1550 Oakland, CA 94612 Tel: (510) 763-5700 Fax: (510) 835-1311 Attorneys for Plaintiff Jeffrey Poole</p>	<p>JOHN M. KELSON kelsonlaw@sbcglobal.net LAW OFFICE OF JOHN M. KELSON 1999 Harrison Street, Suite 700 Oakland, CA 94612 Tel: (510) 465-1326 Fax: (510) 465-0871 Attorneys for Plaintiffs Winsome P. Carter, James C. Howell, Jeffrey Kemp, Andrea Loughlin, Henry V.M. Multala, Burkhard Spring and Robert Traitz</p>
<p>MARK THIERMAN laborlawyer@pacbell.net THIERMAN LAW FIRM 7287 Lakeside Drive Reno, NV 89571 Tel: (775) 284-1500 Fax: (775) 703-5027 Attorneys for Plaintiff David Bachrach</p>	<p>MICHAEL P. LYNN, P.C. mlynn@lynnllp.com CODY L. TOWNS ctowns@lynnllp.com LYNN TILLOTSON & PINKER, LLP 750 N. St. Paul Street, Suite 1400 Dallas, TX 75201 Tel: (214) 981-3800 Fax: (214) 981-3839 Attorneys for Plaintiff Michael Wendling</p>
<p>CHRISTOPHER J. GRAY gray@cjgraylaw.com LAW OFFICES OF CHRISTOPHER J. GRAY, P.C. 460 Park Avenue, 21st Floor New York, NY 10022 Tel: (212) 838-3221 Fax: (212) 508-3695 Attorneys for Plaintiff Michael Wendling</p>	<p>LOUIS F. BURKE lburke@lfbllaw.com LOUIS F. BURKE, P.C. 460 Park Avenue, 21st Floor New York, NY 10022 Tel: (212) 682-1700 Fax: (212) 808-4280 Attorney for Plaintiff Michael Wendling</p>
<p>JOHN HALEBIAN jhalebian@lshllp.com LOVELL STEWART & HALEBIAN, LLP 500 Fifth Avenue, 58th Floor New York, NY 10110 Tel: (212) 608-1900 Fax: (212) 719-4677 Attorneys for Plaintiffs Jeffrey Kemp, Andrea Loughlin, James C. Howell, Robert Traitz, Burkhard Spring, Henry V. M. Multala, Winsome P. Carter and Richard J. Testa, Jr.</p>	<p>CODY L. TOWNS ctowns@lynnllp.com LYNN TILLOTSON & PINKER, LLP 750 N. St. Paul Street, Suite 1400 Dallas, TX 75201 Tel: (214) 981-3800 Fax: (214) 981-3839 Attorneys for Plaintiff Michael Wendling</p>

<p>BRENDAN MONAHAN bmonahan@vmslaw.com VELIKANJE, MOORE & SHORE, P.S. 405 East Lincoln Avenue P.O. Box 22550 Yakima, WA 98907 Tel: (509) 248-6030 Fax: (509) 453-6880 Attorneys for Plaintiff Edward C. Reinhart</p>	<p>ANDREW R. JACOBS EPSTEIN, FITZSIMMONS, BROWN, GIOIA, JACOBS & SPROULS 245 Green Village Road P.O. Box 901 Chatham Township, NJ 07928 Tel: (973) 593-4900 Fax: (973) 593-0179 Attorneys for Plaintiff Peter R. Garrison</p>
--	---